

Committee on Resources

resources.committee@mail.house.gov

[Home](#) [Press Gallery](#) [Subcommittees](#) [Issues](#) [Legislation](#) [Hearing Archives](#)

**TESTIMONY OF
KELLER GEORGE**
UNITED SOUTH AND EASTERN TRIBES, INC., PRESIDENT
AND
MEMBER OF THE ONEIDA INDIAN NATION
BEFORE
REPRESENTATIVES
THE COMMITTEE ON RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES

Current Reorganization of Trust Management

Wednesday, May 12, 2004

Good morning, Mr. Chairman and Honorable Members of the U.S. Committee on Resources.

My name is Keller George. I am a member of the Oneida Indian Nation's Men's Council, and President of United South and Eastern Tribes, Inc. (USET). On behalf of the 24 member tribes of USET, I thank you for this opportunity to present our perspectives on the current reorganization of Indian Trust Management.

USET has played an extremely active role in and continues to monitor the reorganization process since the Administration first approached Tribes with the Bureau of Indian Trust Asset Management (BITAM) vision. At that point, we stood with all Tribes across the country in opposition to BITAM in the hopes of finding a better plan that would more effectively meet the needs of Indian Country. USET spent many hours analyzing the various issues of re-organization and trust reform in an effort to provide insight and tribal perspectives on the changes that are currently taking place and those that are forecast in the years to come. While USET does not agree with everything that is being implemented, we recognize that the "status quo" is no longer an acceptable way of doing business.

The Administration has taken it upon themselves to make drastic and sweeping changes to the Bureau of Indian Affairs (BIA) Programs, Services, Functions, and Activities (PSFA's) regardless of the opposition from Indian Country. Tribes want to participate in a joint effort that can benefit everyone, but those attempts have been suppressed time and time again. DOI officials stated that they have consulted with the Tribes on various re-organization issues that are being instituted; however, this is not totally true. Consultation is not throwing an idea out into Indian Country, seeing a negative response, and moving forward with the idea regardless. Consultation is listening to tribal concerns and taking those comments into account. DOI has made consultation into a mere ritual they must go through to push their agenda. Negotiation is an essential part of consultation and while you will never be able to please everyone, the majority opinion must prevail in the end. USET believes that currently there is still time to implement Tribal needs into the process and gain Tribal support.

It is USET's belief that the BIA re-structuring has been based more on the National Association of Public Administration (NAPA) report of several years ago, than on the research conducted through the As-Is and now the To-Be Process. The OST build-up is leaving very little room for the BIA to achieve adequate staffing levels due to funding going into OST and not into the BIA. These issues must be addressed now before the Administration inadvertently creates a BIA so weak that it would be easy for the Office of Special Trustee (OST) to fill the vacuum, thereby, by taking over all trust functions and dissolving the BIA completely.

We would ask for your consideration of the following areas of concern and recommended solutions to make these changes soother and more effective:

No funds should be diverted from BIA PSFA's to finance the re-organization efforts in regards to the expansion of OST PSFA's. From the beginning, Tribes have made it clear that the DOI should not use program dollars to help fund the mistakes of the Administration. Re-organization must be contingent upon new appropriations from Congress. Taking money from BIA PSFA's will only damage the level of service that the reform process is designed to protect. USET Tribes are very concerned about the future of the regional office, and would emphasize once again how important the regional level is to the daily operation of

programs. Because 90% of the eastern Tribes contract for services from BIA, the regional office is extremely important and acts in place of an agency level office. Many hypotheses are circulating throughout Indian Country as to how the regional re-organization of the BIA will actually work. There has been little direct discussion between the federal government and Tribal Leaders regarding this level of re-organization despite repeated requests from Indian Country. The new Departmental Manual once again is unclear as to the entire multiple and complex relationships expected at the regional level and below. Tribal leaders are confused and need clarification. Will there be Trust Officers at every regional office? Who will they answer to directly? What will be their relationship with other BIA regional staff? What will the relationship be like between the Trust Officers and BIA officials? Who will have final determination authority? These are the types of questions that Tribes need answered in order to understand the complexity of the situation. Both Trust Services and Trust Resources must be funded at the appropriate levels to maintain a satisfactory level of business. USET urges the Administration not to hire new management staff without having basic operational in place. USET is perplexed and asks, "How can a Trust Officer effectively oversee the trust obligations of an agency that doesn't have the manpower and resources to carry out those trust obligations?"

USET suggests that the staffing/hiring initiatives of OST be paralleled with a build up of the BIA regional/agency offices in order to bring those offices up to certain standards regarding adequate staffing and adequate funding levels to diminish backlogs of PSFA's. USET suggests that instead of OST hiring all the trust oversight positions immediately, they only hire one-half of those positions in FY2005. The Department should take the remaining funds from those unfilled positions and "invest" it in the regional/agency offices. Trust officer positions are for oversight, not management of the Trust. Rehabilitating the trust requires the Department of the Interior (DOI) to address financial management and land and natural resource management. The current reorganization only addresses financial management issues and will have little impact on the DOI's ability to offer improved trust services to Tribes that have not allotted substantial portions of their reservations. The re-organization is being driven by the number of IIM account holders in an area, not the total volume of trust work that is being performed. Only the OST Trust Officers have been funded, BIA Deputy Superintendents have not yet been authorized. The re-organization does not provide for the staffing necessary to address the appraisals, surveys and compliance activities required to improve the management of land and natural resources. USET fears that the vacuum created by the large OST staff versus the small, inadequate BIA staff will lead OST to try to fill those positions through their organization, thus taking the Tribes back to the BITAM plan which has been strongly opposed by Indian Country. Re-organization is a slow process involving more than just "staffing up".

Carryover funds from previous years should not be used for the re-organization effort. The President's FY05 Budget Proposal has a reduction of \$5.4 million in program operations to "redirect funds" to high priority programs. USET believes that the thought process is that the Administration can take the \$5.4 million cut and use it for "high priorities" such as reform because the anticipated FY04 carryover funds can help sustain the operation of programs. Once again, the Administration's "high priorities" are not necessarily the "high priorities" from Indian Country. The Administration must not take from the programs in hopes that there will be enough carryover to cover the loss. Tribes must have the carryover funds for the already unfunded or under funded programs they administer. USET believes that the Administration must make a concerted effort to gain new appropriations for their "high priorities" rather than take from the operation of programs.

The To-Be Processes must be phased into the re-organization efforts. The To-Be process determined the best practices for business processes and the resources needed to accomplish these goals. In the March 8, 2003 Federal Register Notice, OST asked for comments on The To-Be Trust Business Model which identified five processes. Indian Country and Tribal Leaders are unable to comment on how these multiple changes will affect them. USET again will stress that while we support change from the "status quo", the implementation or re-engineering and re-organization must be slowed. USET suggests one process be introduced per year over a five year period. This would allow the Department to refine processes as they are introduced. This will also allow BIA to request multiple year appropriations instead of large single year appropriations from Congress.

Tribes must know how the re-organization is going to affect the regional/agency level operations once and for all. The Administration, the To-Be Process, and the OST have yet to determine how these upper-level changes are going to affect the regional and agency levels. The regional organization charts currently in place do not accurately portray the current situation at local levels. USET Tribes were notified of positions at the Eastern Region that will be changing their reporting relationship directly to Central Office. No organizational charts show these new relationships, the impact on the region, impacts to tribal shares and budgets, and impacts to future funding levels. Tribes can not be expected to make comments on the re-organization where there is no information available on which to base the comments. Tribes are not being fully informed of impending changes. USET would propose to work with the Administration to put into place an organizational system that works with the unique needs of the Eastern Region.

It is time for the federal government to be held accountable for their trust responsibility. Indian Country must not be held at bay any longer by pending cases in the Courts. It is critical that continuity and accountability be established as a cornerstone of the re-organization efforts. Indian Country must have a way to hold their

trustee accountable for actions taken that may be contrary to the advancement of Indian people. Recent Supreme Court decisions have concluded that the federal government has avoided fiduciary trust responsibilities and operated with “bad-faith” in its business relationships with Indian Tribes. In *United States v. Navajo Nation*, the Supreme Court stated that the Mitchell I and Mitchell II analysis must focus on a specific right-creating or duty-imposing statute or regulation. In this case, the Court held against imposing a trust obligation on the government. It reasoned that the existence of a trust relationship alone is not sufficient to support a claim for damages under the Indian Tucker Act (28 U.S.C. ss 1505). Conversely, in *United States v. White Mountain Apache*, the Court acknowledged the Statue at issue did not expressly subject the government to fiduciary duties of a trustee. Nonetheless, the Court determined that the Fort Apache property was expressly subject to a trust. In so doing, the Court drew a “fair inference” to find an obligation on the part of the government to preserve the property as a trustee, and determined that its branch of trust was enforceable by damages.

From these cases, we have learned that unless a statute or regulation imposes a specific fiduciary obligation on the part of the government toward Tribes and their resources, the Court will look unfavorably on the imposition of such a duty. We have also learned that trust principals must be clearly defined in order for the government to be held accountable for a breach of trust duties. In a sense, Indian Country was fortunate that the Court felt compelled to infer a trust obligation in the *White Mountain Apache* decision; Indian Country was not so lucky in *Navajo Nation*. The dichotomy of rationales created by these decisions indicates that without clear guidelines and definition of trust principles, the Court will continue to infer – or ignore as the case may be – the government’s fiduciary responsibility toward Indian Tribes. Indian Tribes must be allowed to hold their trustee accountable for mismanagement of their resources. We must begin by defining trust principles that create consistency in application across all trust activities. Tribes should no longer be forced to find remedy through the courts.

USET Tribes support reform and understand that re-organization is necessary for the government to fulfill its fiduciary responsibilities. Many Tribes feel that efforts to this point have been futile and DOI is moving forward with their own agenda. Tribes must no longer receive ambiguous and confusing information about the re-organization process. USET recognizes the urgent need for Tribes to be actively engaged in the re-organization process, not just shown the end process. Future generations of Indian people are depending on Tribal Leaders to take a stand and approach reform with a united voice.

Once again, I would like to emphasize the great importance of proper trust accountability and the federal trust obligation. Efficiently operated trust programs could benefit Indian Country greatly and we have all seen what a poorly operated trust system can produce. Indian people have given so much to the federal government based on the promise of adequate management of assets through the Trustee relationship. That relationship has been severely damaged, and must be mended. USET stands ready to assist in the processes of mending relationships, establishing accountability of trust, and re-organization of the BIA. USET Tribes have the experience and knowledge to work through these issues.

USET Tribes understand the political pressures associated with completion of the re-organization, but we ask that the Administration look at the far reaching effects these changes will have on Indian Country today and in the future.

Thank you and I would be pleased to answer questions at this time.